IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1448 OF 2004

Shafi Ahmed Raheman Khan Applicant
versus
The State of Maharashtra & ors. Respondents

M.S.Karnik for applicant.
P.S.Hingorani, APP for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 3rd October 2006

PC :

1. Rule. Heard forthwith. The contesting respondent is the State. At the request of Shri Karnik, respondent no.2 is deleted.

2. The applicant is accused no.1 in Criminal Case No.95 of 1998 which is pending before the First Ad-hoc Additional Sessions Judge, Kalyan.

3. During the course of the trial and after the applicant's statement u/s 313 of Cr.P.C. was recorded, an application was made by the applicant to summon defence witnesses. He gave names of two witnesses initially. The application in that behalf was allowed and both witnesses were issued summonses but on the returnable date only one witness was present and

could be examined. Thereupon, an application at page 21 of this petition paper book was made with a request that the matter be postponed for examination of second witness who has been permitted to be examined so also Headmaster of an Urdu School.

4. Shri Karnik submits that both witnesses are crucial to the defence case inasmuch as the charge is of kidnapping/abducting with the purpose set out in Section 366 of IPC.. He submits that in such cases the factor of age of victim/complainant is of vital importance. In such circumstances and when specific queries were put to the applicant in the statement under Section 313 of Cr.P.C. with regard to the age of complainant, it would be appropriate and in the interest of justice that the application be allowed and both witnesses are permitted to depose. He assails the order of 9th March 2004 and submits that although the same is interlocutory and this Court is ordinarily disinclined to interfere, yet, in the peculiar facts of this case and when application was granted in part by the Trial Court, this Court should exercise its inherent powers and also those under Article 227 of Constitution of India to quash and set aside the order dated 9th March

2004.

5. The learned APP states that in the peculiar facts of this case and when the trial is stayed for last two years, this Court should pass appropriate orders.

6. Considering the peculiar facts of this case and because the Trial Court granted liberty to the applicant to examine two witnesses so also his application in that behalf is granted in part, it would be appropriate and in the interest of justice if the Trial Court could give a last opportunity to the applicant to examine the defence witnesses.

7. Shri Karnik after taking instructions states that save and except two witnesses mentioned in the application at page 20, the defence would not examine any other witness. Further, on the date and time fixed by this Court the applicant would examine both witnesses and complete the examination-in-chief on the date of their presence. He states that for this purpose no adjournment will be sought by the applicant.

8. In the light of the facts places on record and with a view to give last chance to the

applicant, the application at page 20 dated 9th March 2004 in C.C.No.95 of 1998 is granted. The applicant to issue summons and keep the witnesses present on 13th November 2006. Needless to state that on this day, the matter shall be taken up by the Trial Court and if the summonses are not served or the applicant is absent, then the Trial Court to proceed with the trial on the basis that it's order passed on 9th March 2004 remains uninterfered and undisturbed. However, if the summonses are issued and the witnesses are present on this date, the Trial Court to grant opportunity to the applicant to examine them and thereafter endeavour and complete recording of evidence within a period of three weeks from the date of their appearance. Trial Court then to proceed with the case and dispose it off as expeditiously as possible and in any event within a period of six months from today. The applicant to pay costs quantified at Rs.1,000/-. Costs to be paid to Thane District Legal Services Authority. Costs to be paid within one week from today. Rule made absolute in the above terms.

(S.C.DHARMADHIKARI, J.)